

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA)	
)	Docket No.:
v.)	
)	
BILL HARBERT INTERNATIONAL)	Violations:
CONSTRUCTION, INC.; BILHAR)	15 U.S.C. § 1
INTERNATIONAL ESTABLISHMENT)	18 U.S.C. § 371
f/k/a HARBERT INTERNATIONAL)	
ESTABLISHMENT; and ELMORE)	CR-01-PT-0302-S
ROY ANDERSON;)	
)	Filed: July 25, 2001
Defendants.)	
_____)	

INDICTMENT

COUNT ONE

**CONSPIRACY TO RESTRAIN TRADE
(15 U.S.C. § 1)**

The Grand Jury charges:

I

DESCRIPTION OF THE OFFENSE

1. BILL HARBERT INTERNATIONAL CONSTRUCTION, INC.,
BILHAR INTERNATIONAL ESTABLISHMENT f/k/a HARBERT
INTERNATIONAL ESTABLISHMENT, and ELMORE ROY ANDERSON are
hereby indicted and made defendants in this Count.

2. Beginning at least as early as May 1988 and continuing at least until
September 20, 1996, the exact dates being unknown to the Grand Jury, the

defendants and others entered into and engaged in a combination and conspiracy to suppress and eliminate competition on construction contracts funded by the United States, through the United States Agency for International Development ("USAID") and the United States Army Corps of Engineers ("USCOE"), in the Arab Republic of Egypt in unreasonable restraint of interstate and foreign trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

3. The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendants and co-conspirators, the substantial terms of which were to rig the bids on certain United States-funded construction contracts in Egypt to ensure that the designated winner would be awarded the contract and would receive payment from the United States Treasury.

4. For the purpose of forming and carrying out the charged combination and conspiracy, the defendants and co-conspirators did those things that they combined and conspired to do, including, among other things:

(a) participating in meetings and conversations to discuss rigging the bids on USAID-funded Contracts 20A, 29, and 07 and USCOE-funded contract Peace Vector IV, Phase II;

(b) agreeing, during those meetings and conversations, to bid at certain levels, to not bid, or otherwise to increase the price level of bids on USAID-funded Contracts 20A, 29, and 07;

(c) agreeing, during those meetings and conversations, to reduce or eliminate competition on USAID-funded Contracts 20A, 29, and 07 and USCOE-funded contract Peace Vector IV, Phase II;

(d) agreeing, during those meetings and conversations, that certain co-conspirators would be compensated by the designated winning bidder in exchange for their commitments to reduce or eliminate competition on USAID-funded Contracts 20A, 29, and 07;

(e) submitting bids on USAID-funded Contracts 20A, 29, and 07 pursuant to the terms of the bid-rigging conspiracy;

(f) making payments to co-conspirators who agreed to not compete for USAID-funded Contracts 20A and 07 pursuant to the bid-rigging conspiracy;

(g) receiving payment from a co-conspirator for agreeing not to compete on USAID-funded Contract 29 pursuant to the bid-rigging conspiracy; and

(h) performing USAID-funded Contracts 20A, 29, and 07, submitting payment requests, and receiving progress payments from the United States Treasury.

II

BACKGROUND

5. As a result of the Camp David Peace Accords in the late 1970s, the United States and other Western countries committed to fund extensive rehabilitation work on the water treatment and disposal facilities in Egypt. Pursuant to this commitment, USAID, acting on behalf of the United States, funded nearly a billion dollars in construction work by United States-based companies in Egypt in the late 1980s and early 1990s. In addition, during the same period, the United States funded certain other construction projects in Egypt through USCOE, including Peace Vector IV, Phase II. Harbert International, Inc. and J.A. Jones Construction Company, two of the prequalified contractors, bid on these projects as partners in a series of joint ventures known as the Harbert-Jones Companies.

III

THE DEFENDANTS AND CO-CONSPIRATORS

6. Defendant BILL HARBERT INTERNATIONAL CONSTRUCTION, INC. ("BHIC") is organized and exists under the laws of the State of Delaware and has its principal place of business in Birmingham, Alabama. During the period covered by this Indictment, BHIC engaged in the international construction business in Egypt. Beginning on or about December 10, 1991, and continuing throughout the rest of the conspiracy period, BHIC was the *de facto* joint venture partner with J.A.

Jones Construction Company on USAID-funded Contracts 20A and 07, and other United States-funded projects bid on and performed by the Harbert-Jones Companies in Egypt. BHIC is owned one hundred percent by Bill L. Harbert. From December 10, 1991, until at least the end of the conspiracy period, BHIC was also known as Harbert International.

7. Defendant BILHAR INTERNATIONAL ESTABLISHMENT formerly known as HARBERT INTERNATIONAL ESTABLISHMENT is organized and exists under the laws of Liechtenstein and has its principal place of business in Birmingham, Alabama. During the period covered by this Indictment, HARBERT INTERNATIONAL ESTABLISHMENT engaged in the international construction business in Egypt. Before December 10, 1991, HARBERT INTERNATIONAL ESTABLISHMENT was owned fifty percent by Harbert International, Inc. ("HII"), a Birmingham, Alabama-based company, and fifty percent by Bill L. Harbert. Since December 10, 1991, Bill L. Harbert has owned twenty-one percent of HARBERT INTERNATIONAL ESTABLISHMENT and BHIC has owned seventy-nine percent. On or about September 21, 1993, the exact date being unknown to the Grand Jury, HARBERT INTERNATIONAL ESTABLISHMENT changed its name to BILHAR INTERNATIONAL ESTABLISHMENT. During the conspiracy period, it was also known as Harbert International.

8. Defendant ELMORE ROY ANDERSON served as the president and chief executive officer of BILHAR INTERNATIONAL ESTABLISHMENT formerly

known as HARBERT INTERNATIONAL ESTABLISHMENT ("HIE") throughout the conspiracy period. From on or about December 10, 1991, until the end of the conspiracy period, BHIC represented to others that ELMORE ROY ANDERSON was the president of its international division in matters affecting United States-funded construction contracts in Egypt.

9. ABB ASEA Brown Boveri, Ltd. is, and was during the conspiracy period, a Swiss company with its principal place of business in Zurich, Switzerland. ABB ASEA Brown Boveri, Ltd., is the ultimate parent company of ABB SUSA, Inc., formerly known as Sadelmi U.S.A., Inc., a New York company with its principal place of business in North Brunswick, New Jersey.

10. Archirodon Group, Inc. was, during the conspiracy period, a Panamanian company headquartered in Geneva, Switzerland. Archirodon Group, Inc. was the owner of the George A. Fuller Company, a Maryland company with its principal place of business in Virginia.

11. Bilfinger + Berger BmbH is, and was during the conspiracy period, a German company with its principal place of business in Mannheim, Germany. Bilfinger + Berger BmbH is the parent company of Fru-Con Construction, Inc., a Missouri corporation with its principal place of business in Ballwin, Missouri.

12. J.A. Jones Construction Company is, and was during the conspiracy period, a Delaware corporation with its principal place of business in Charlotte, North Carolina.

13. The Harbert-Jones Companies were joint ventures that were created to bid on and, if the bids were successful, perform USAID-funded Contracts 20A, 29, and 07, among others. J.A. Jones Construction Company held a forty percent share of each of these joint ventures. HII held a sixty percent share of each joint venture during the prequalification stage of each contract. After USAID awarded Contracts 20A and 07 to the Harbert-Jones Companies, HII assigned its interest in the contracts to HIE for one dollar.

14. Philipp Holzmann AG is, and was during the conspiracy period, a German company with its principal place of business in Frankfurt, Germany. Philipp Holzmann is the ultimate parent company of J.A. Jones Construction Company.

15. Various business organizations and individuals not made defendants in this Indictment participated as co-conspirators in the offense charged and performed acts and made statements in furtherance thereof.

16. Whenever in this Indictment reference is made to any act, deed, or transaction of a corporation or joint venture, the allegation means that the corporation or joint venture engaged in the act, deed, or transaction by or through its officers, directors, employees, agents, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

IV

TRADE AND COMMERCE

17. During the period covered by this Count, conspirator companies purchased substantial quantities of supplies, materials, and equipment in anticipation of bidding on and performing the United States-funded construction contracts in Egypt that are the subject of this Indictment. These supplies, materials, and pieces of equipment were shipped from the United States to Egypt in a continuous and uninterrupted flow of interstate and foreign trade and commerce for use on those contracts.

18. Between August 1989 and June 20, 1993, the exact dates being unknown to the Grand Jury, the Harbert-Jones Companies received \$107,071,324 in progress payments from the United States Treasury as payment on Contract 20A. The Harbert-Jones Companies deposited these funds into its bank account in Birmingham, Alabama. The funds were in the flow of, and substantially affected, interstate and foreign trade and commerce.

19. Between July 1991 and January 18, 1995, the exact dates being unknown to the Grand Jury, the Harbert-Jones Companies received \$43,236,591 in progress payments from the United States Treasury as payment on Contract 07. The Harbert-Jones Companies deposited these funds into its bank account in Birmingham, Alabama. The funds were in the flow of, and substantially affected, interstate and foreign trade and commerce.

20. Between May 1990 and September 20, 1996, the exact dates being unknown to the Grand Jury, Sadelmi U.S.A., Inc. received \$134,775,817 in progress payments from the United States Treasury as payment on Contract 29. The funds were in the flow of, and substantially affected, interstate and foreign trade and commerce.

V

JURISDICTION AND VENUE

21. The combination and conspiracy charged in this Count was carried out, in part, within the five years preceding the return of this Indictment and, in part, within the Northern District of Alabama.

ALL IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

COUNT TWO
CONSPIRACY TO DEFRAUD THE UNITED STATES
(18 U.S.C. § 371)

The Grand Jury further charges:

I

DESCRIPTION OF THE OFFENSE

1. BILL HARBERT INTERNATIONAL CONSTRUCTION, INC. ("BHIC"), BILHAR INTERNATIONAL ESTABLISHMENT f/k/a HARBERT INTERNATIONAL ESTABLISHMENT ("HIE"), and ELMORE ROY ANDERSON are hereby indicted and made defendants in this Count.

2. Each and every allegation contained in Paragraphs 5 through 16 of Count One of this Indictment is here realleged with the same force and effect as if fully set forth in this Count.

3. Beginning at least as early as May 1988 and continuing at least until September 20, 1996, the exact dates being unknown to the Grand Jury, within the Northern District of Alabama and elsewhere, the defendants and others known and unknown to the Grand Jury knowingly and wilfully conspired to defraud the United States Agency for International Development ("USAID"), an agency of the United States, in the procurement of construction services on Contracts 20A, 29, and 07, in violation of Title 18, United States Code, Section 371.

II

THE CONSPIRACY

4. It was a part and object of the aforesaid conspiracy to defraud USAID that the defendants and co-conspirators would and did agree to inflate and manipulate the prices bid on USAID-funded construction contracts in Egypt to ensure that the Harbert-Jones Companies would be the low bidder on Contracts 20A and 07, and that Sadelmi U.S.A., Inc. would be the low bidder on Contract 29.

5. It was further a part and object of the aforesaid conspiracy to defraud USAID that the defendants and co-conspirators would and did deceive the United States into believing that the prices bid on Contracts 20A, 29, and 07 were arrived at independently, competitively, and without consultation or agreement with competing bidders, when, in fact, the prices bid were non-competitive and collusive and resulted from communications and agreements between and among the defendants and co-conspirators.

III

OVERT ACTS

6. In furtherance of the conspiracy described in this Count, and to effect the objects thereof, defendants BHIC, HIE, and ELMORE ROY ANDERSON and their co-conspirators committed overt acts in the Northern District of Alabama and elsewhere, including, but not limited to, the following:

(a) In or about May 1988, the exact date being unknown to the Grand Jury, conspirators acting on behalf of the Harbert-Jones Companies held a meeting in the Frankfurt, Germany, offices of Philipp Holzmann AG during which competitors discussed the submission of non-competitive bids on Contract 20A;

(b) In or about June 1988, the exact date being unknown to the Grand Jury, conspirators acting on behalf of the Harbert-Jones Companies negotiated a bid-rigging agreement with Bilfinger + Berger BmbH, under which it was agreed that Fru-Con Construction, Inc. would submit an artificially inflated bid on Contract 20A in exchange for the payment of money from Philipp Holzmann AG;

(c) On or about August 3, 1988, the exact date being unknown to the Grand Jury, Philipp Holzmann AG and others known and unknown to the Grand Jury acting on behalf of the Harbert-Jones Companies negotiated a bid-rigging agreement with Archirodon Group, Inc., under which it was agreed that George A. Fuller Company would not bid on Contract 20A in exchange for the payment of money from Philipp Holzmann AG;

(d) On or about August 3, 1988, defendant ELMORE ROY ANDERSON, acting on behalf of the Harbert-Jones Companies, submitted a letter to the project owner of Contract 20A increasing the previously submitted Harbert- Jones Companies' bid on Contract 20A by 3.5 percent to

approximately \$129 million;

(e) On or about August 4, 1988, conspirators made bid submissions in accordance with the bid-rigging agreement on Contract 20A;

(f) On or about December 7, 1988, defendant ELMORE ROY ANDERSON, acting on behalf of the Harbert-Jones Companies, and a co-conspirator renegotiated the payment terms of the bid-rigging agreement with Archirodon Group, Inc. on Contract 20A;

(g) In or about April 1989, the exact date being unknown to the Grand Jury, a conspirator acting on behalf of the Harbert-Jones Companies negotiated a bid-rigging agreement with Sadelmi U.S.A., Inc. under which it was agreed that the Harbert-Jones Companies would submit an artificially inflated bid on Contract 29 in exchange for the payment of money from ABB ASEA Brown Boveri, Ltd.;

(h) On or about July 2, 1989, defendant ELMORE ROY ANDERSON, acting on behalf of the Harbert-Jones Companies, and Sadelmi U.S.A., Inc., made bid submissions in accordance with the bid-rigging agreement on Contract 29;

(i) On or about January 16, 1990, the exact date being unknown to the Grand Jury, defendant ELMORE ROY ANDERSON, acting on behalf of defendant HIE, and others known and unknown to the Grand Jury met with agents from Archirodon Group, Inc. to discuss the payment schedule under

the bid-rigging agreement on Contract 20A;

(j) On or about January 17, 1990, Philipp Holzmann AG paid \$500,000 to Archirodon Group, Inc. under the bid-rigging agreement on Contract 20A;

(k) On or about January 30, 1990, Philipp Holzmann AG paid \$1,000,000 to Archirodon Group, Inc. under the bid-rigging agreement on Contract 20A;

(l) On or about June 1, 1990, Philipp Holzmann AG paid \$500,000 to Archirodon Group, Inc. under the bid-rigging agreement on Contract 20A;

(m) On or about June 11, 1990, Philipp Holzmann AG paid \$1,026,029 to Bilfinger + Berger BmbH under the bid-rigging agreement on Contract 20A;

(n) On or about August 27, 1990, ABB ASEA Brown Boveri, Ltd. paid \$3.4 million to Philipp Holzmann AG under the bid-rigging agreement on Contract 29;

(o) In or about October 1990, the exact date being unknown to the Grand Jury, defendant ELMORE ROY ANDERSON and other conspirators acting on behalf of the Harbert-Jones Companies negotiated a bid-rigging agreement with Bilfinger + Berger BmbH, under which it was agreed that Fru-Con Construction, Inc. would submit an artificially inflated bid on Contract 07 in exchange for the payment of money from Philipp Holzmann

AG;

(p) On or about October 29, 1990, Philipp Holzmann AG paid \$500,000 to Archirodon Group, Inc. under the bid-rigging agreement on Contract 20A;

(q) On or about November 25, 1990, defendant ELMORE ROY ANDERSON, acting on behalf of the Harbert-Jones Companies, made a bid submission in accordance with the bid-rigging agreement on Contract 07;

(r) During the period between March 1990 and the end of October 1990, the exact dates being unknown to the Grand Jury, defendant ELMORE ROY ANDERSON and others known and unknown to the Grand Jury instructed the Harbert-Jones Companies to pay approximately \$3,361,503 to various Swiss bank accounts controlled by Philipp Holzmann AG in order to reimburse it for the payments made to Archirodon Group, Inc. and Bilfinger + Berger BmbH under the bid-rigging agreements;

(s) On or about December 18, 1990, Philipp Holzmann AG paid \$500,000 to Archirodon Group, Inc. under the bid-rigging agreement on Contract 20A;

(t) On or about January 4, 1991, the exact date being unknown to the Grand Jury, Philipp Holzmann AG paid approximately \$1.34 million to a co-conspirator as its share of the proceeds under the bid-rigging agreement on Contract 29;

(u) On or about January 29, 1991, the exact date being unknown to the Grand Jury, Philipp Holzmann AG paid \$2.01 million to a co-conspirator as its share of the proceeds under the bid-rigging agreement on Contract 29;

(v) On or about June 10, 1991, Philipp Holzmann AG paid \$1,200,000 to Bilfinger + Berger BmbH under the bid-rigging agreement on Contract 20A;

(w) Between September 1991 and December 1994, the exact date being unknown to the Grand Jury, Philipp Holzmann AG paid 1,500,000 German marks to Bilfinger + Berger BmbH under the bid-rigging agreement on Contract 07;

(x) During the period between August 1989 and December 10, 1991, agents for HII, and from December 10, 1991, until June 20, 1993, agents for defendant BHIC, acting on behalf of the Harbert-Jones Companies, submitted to USAID a total of thirty-three payment requests on Contract 20A and received payments from the United States Treasury totaling \$107,071,324;

(y) During the period between August 1989 and December 10, 1991, agents for HII, and from December 10, 1991, until June 20, 1993, agents for defendant BHIC, acting on behalf of the Harbert-Jones Companies, submitted to USAID a total of thirty-three material false representations in documents entitled "Contractor's Certificate and Agreement with Agency for

International Development -- Contractor's Invoice and Contract Abstract" on Contract 20A in which they falsely certified that no one had been compensated in order to obtain the contract, when in fact more than \$5.226 million had been paid to conspirators in order for the Harbert-Jones Companies to obtain the contract, thus materially undermining the ability of USAID to procure construction services at a competitive price;

(z) During the period between July 1991 and December 10, 1991, agents for HII, and from December 10, 1991, until January 18, 1995, agents for defendant BHIC, on behalf of the Harbert-Jones Companies, submitted to USAID a total of twenty-two payment requests on Contract 07 and received payments from the United States Treasury totaling \$43,236,591;

(aa) During the period between July 1991 and December 10, 1991, agents for HII, and from December 10, 1991, until January 18, 1995, agents for defendant BHIC, acting on behalf of the Harbert-Jones Companies, submitted to USAID a total of twenty-two material false representations in documents entitled "Contractor's Certificate and Agreement with Agency for International Development -- Contractor's Invoice and Contract Abstract" on Contract 07 in which they falsely certified that no one had been compensated in order to obtain the contract, when in fact 1,500,000 German marks had been paid to conspirators in order for the Harbert-Jones Companies to obtain the contract, thus materially undermining the ability of USAID to procure

construction services at a competitive price;

(bb) During the period between May 1990 and September 20, 1996, the exact dates being unknown to the Grand Jury, Sadelmi U.S.A., Inc. submitted to USAID fifty-six payment requests on Contract 29 and received payments from the United States Treasury totaling \$134.775 million; and

(cc) During the period between May 1990 and September 20, 1996, the exact dates being unknown to the Grand Jury, Sadelmi U.S.A., Inc. submitted to USAID fifty-six material false representations in documents entitled "Contractor's Certificate and Agreement with Agency for International Development -- Contractor's Invoice and Contract Abstract" on Contract 29 in which its agents falsely certified that no one had been compensated in order to obtain the contract, when in fact \$3.4 million dollars had been paid to Philipp Holzmann AG in order to obtain the contract, thus

materially undermining the ability of USAID to procure construction services at a competitive price.

ALL IN VIOLATION OF TITLE 18, UNITED STATES CODE,
SECTION 371.

Dated this 25th day of July, 2001.

A TRUE BILL

/S/_____
FOREPERSON

/S/_____
JOHN T. ORR
Chief, Atlanta Field Office

/S/_____
CHARLES A. JAMES
Assistant Attorney General

/S/_____
WILLIAM D. DILLON
JAMES J. KUROSAD

/S/_____
JAMES M. GRIFFIN
Deputy Assistant Attorney General

Attorneys
Antitrust Division
U.S. Department of Justice
75 Spring St., S.W., Suite 1176
Atlanta, GA 30303
404/331-7100

/S/_____
SCOTT D. HAMMOND
Director of Criminal Enforcement

Antitrust Division
U.S. Department of Justice

/S/_____
HERBERT H. HENRY, III
United States Attorney
Northern District of Alabama